

An out-of-State seller falling under the definition of a "retailer maintaining a place of business in Illinois", as defined in 86 Ill. Adm. Code 150.201(i), is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL.)

January 11, 1999

Dear Mr.Xxxxx:

This letter is in response to your letter dated December 3, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I have a few sales tax questions. My company is a OUT-OF-STATE business. Would you be kind enough to respond in writing to the above address?

BUSINESS provides technical training seminars in a group setting. Our customers receive the training and a manual or workbook for their investment.

Is BUSINESS required to collect a sales tax on these training seminars in Illinois?

BUSINESS also sells equipment. We are planning to sell in person as well as via the mail and telephone to buyers (end users) in Illinois. Is BUSINESS required to collect a sales tax on equipment sales in Illinois?

Also, would you send me the publication which defines what goods are taxed in Illinois?

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

Seminar or training session providers incur Retailers' Occupation Tax on the gross receipts from sales in Illinois of standardized training materials, such as workbooks and reference books. The tax base is the selling price of the books. The sales of these books are subject to Retailers' Occupation Tax whether the books are sold separately or as a part of the total tuition charge for the

seminars. If the books are sold as part of the total tuition charge, the providers must allocate the amount for the selling price of the books and charge tax on that amount.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk

Enc.